

Serial No.: 09/831,431  
Art Unit: 1619

REMARKS/ARGUMENTS

Claims 11-22 are pending in this application.

Favorable consideration and allowance of the instant application is respectfully requested in view of the following remarks.

The Examiner's rejections, as they pertain to the patentability of the claims, are respectfully traversed.

Claims 11-22 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Prat et al. (US 5,718,891), in view of Ponsati Obiols et al. (US 5,880,299), and Inman et al. (US 5,935,561). This rejection is again respectfully traversed for the following reasons.

Briefly stated, the present invention is directed to a process for treating skin and hair involving contacting these substrates with a composition containing an esterquat, an oil component, a fatty alcohol and a fatty alcohol polyglycol ether.

Applicant had previously argued that both the Prat and Ponsati Obiols references failed to contain any teaching or suggestion relating to the use of the claimed oil component, in combination with the other claimed components, for treating hair and/or skin. In an attempt to overcome this admitted lack of teaching or suggestion, the Examiner relies on the teaching of Inman regarding the use of certain organic oils, in combination with cationic conditioning polymers, for treating hair. However, it was Applicant's position that the Examiner had failed to provide any evidence as to why one of ordinary skill in the art would: (1) wish to seek out and employ the oil component of Inman, when both Prat and Ponsati Obiols clearly teach that very effective hair care properties can be obtained using their disclosed formulations; and (2) believe that Inman's organic oils would be effective if incorporated into those formulations disclosed by either the Prat and/or Ponsati Obiols references.

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In response thereto, the Examiner contends that: (1) the fact that Prat and Ponsati Obiols are silent regarding defects in terms of the quality of their hair care compositions does not negate the obviousness of incorporating Inman's hair conditioning oils therein, and (2) Applicant's invention does not exclude the presence of other components, such as those required by Inman, thus making the rejection proper. Applicant respectfully disagrees with both of these contentions, for the following reasons.

Initially, Applicant would like to note that since both Prat and Ponsati Obiols **ADMITTEDLY** fail to teach or suggest the use of the claimed oils, as well as those of the Inman reference, the issue here is whether one of ordinary skill in the art would be motivated to seek out and wish to employ Inman's oils in the Prat and Ponsati Obiols compositions. With respect to the Examiner's first contention, the fact that neither the Prat nor Ponsati Obiols formulations teach or suggest a need for improvement in their hair care properties is believed by Applicant to negate the motivation, on the part of the routineer, to wish to change their formulations by incorporating additional, and apparently unnecessary components which, to the routineer reading these prior art references, will add to the costs, formulation requirements, compatibility profile, etc. of the compositions. The old adage, "If it ain't broke, don't fix it", is believed by Applicant to clearly apply here.

As was previously noted by Applicant, it is well settled that an Examiner cannot establish obviousness through references describing various aspects of an Applicant's invention unless the Examiner also provides evidence of motivating force to compel a person skilled in the art to do what Applicant has done. See, Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Neither the Prat nor the Ponsati Obiols references contain any teaching or suggestion relating to the use of the claimed conditioning oils. The Inman reference, while it does the use of conditioning, it neither teaches nor suggests that their use in hair formulations, **IN GENERAL**, is advantageous.

Which brings us to the Examiner's second contention that the claimed invention

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does not prohibit the inclusion of any of the components disclosed in the Inman formulation. As was noted above, the issue here is whether one of ordinary skill in the art would be motivated, **based on the teachings of the references**, to employ the conditioning oils of Inman in the formulations of Prat and/or Ponsati Obiols. In the Inman reference, col. 1, lines 59-62, it states, "It has now been found that **select combinations of certain low viscosity, organic conditioning oils and synthetic esters**, when used with a cationic hair conditioning polymer, provide improved conditioning performance from an anionic surfactant shampoo composition." (emphasis added). Applicant respectfully submits that one of ordinary skill in the art, after having read this, would believe that it is only when these **select combinations** of components are used does one achieve improved conditioning performance. Since neither the Prat nor the Ponsati Obiols formulations contain this **select combination** of components, the motivation to use only the conditioning oil of the Inman formulation, in the absence of the other **select combination** of components is believed by Applicant to be non-existent. There is no articulated reason in any of the references for the routineer to be motivated to employ the conditioning oils of Inman when this reference clearly teaches that it is only when they are combined with the other select components that any improvement in conditioning is realized. Once again, since neither the Prat nor the Ponsati Obiols formulations contain the **select combination** of components disclosed by Inman, the motivation to use only the conditioning oil of the Inman formulation, in the absence of the other **select combination** of components is **non-existent**.

Accordingly, for all of the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

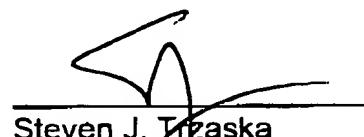
It is believed that the foregoing reply is completely responsive under 37 CFR 1.111 and that all grounds for rejection are completely avoided and/or overcome. A Notice of Allowance is therefore earnestly requested.

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The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,

  
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